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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MICHAEL BLAIS,

Plaintiff and Appellant,

v.

RIVERSIDE COUNTY REGIONAL
MEDICAL CENTER,

Defendant and Respondent.

E053507

(Super.Ct.No. RIC451384)

OPINION

APPEAL from the Superior Court of Riverside County. John W. Vineyard,
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Dismissed.

Veatch Carlson, Christopher R. Baker and Gina Genatempo for Plaintiff and
Appellant.

Rinos & Martin, Dimitrios C. Rinos, Linda B. Martin and Adrianna C. Paige, for
Defendant and Respondent.

Plaintiff and appellant Michael Blais appeals after the trial court granted summary
judgment in favor of defendant and respondent Riverside County Regional Medical

Center (Center) on plaintiff's personal injury action on the grounds that plaintiff failed to comply with the Tort Claims Act (Gov.Code,¹ § 810 et seq.).²

I. PROCEDURAL BACKGROUND AND FACTS

Plaintiff suffered a work-related injury in 1996, which resulted in “problems with his neck and . . . a gradual onset of pain in his lower back and left leg.” In 2003 plaintiff was described as a “60-year-old male with a long history of heavy smoking and walked with a cane.” He had already undergone two prior cervical spine surgeries. Plaintiff became a patient of Dr. David Siambanes in 2003 when the doctor recommended and performed cervical spine surgery. While the surgery provided some pain relief, plaintiff “complained of ongoing lower back pain as well as pain that radiated into his legs.” By December 2004, plaintiff “was severely debilitated and required a cane for ambulation[, and] [h]e exhibit[ed] poor range of motion of the lumbar spine.” Dr. Siambanes recommended “an anterior fusion from L4 to the sacrum and posterior fusion from T10 to S1 with correction of the deformity and decompression of the lateral recess at L4-5.” After plaintiff was cleared for surgery, Dr. Siambanes explained the procedure and discussed the risks and benefits. On March 22, 2005, plaintiff went to the Center, a Riverside County owned and operated hospital, to undergo an “anterior-posterior fusion at L4-L5 and L5-S1 with posterior fusion T10 to the sacrum using iliac bolts and an iliac

¹ All further statutory references are to the Government Code unless otherwise indicated.

² Plaintiff also named David Siambanes, D.O., and Arnold Tabuenca, M.D., as additional defendants; however, they were dismissed pursuant to stipulation on August 30, 2006.

graft.” Within three days after the surgery, plaintiff noticed something wrong with his left foot. Plaintiff remained hospitalized at the Center until he was transferred out on March 31. During this hospitalization, plaintiff developed ulcers on his left foot. Later, he developed “left foot osteomyelitis” and a “drop foot” condition of his left lower extremity. By April 11, plaintiff stated that his back pain was nearly completely resolved; however, he suffered left leg discomfort, including pressure sores to his left heel and dorsum of the left foot, and decreased sensation. The last appointment that plaintiff had with Dr. Siambanes was in January or February 2006.

On March 2, 2006, plaintiff served the County of Riverside (County) with a claim for damages based on negligence resulting from his March 22, 2005, surgery and his postsurgical care from March 22 to March 31, 2005. On March 20, 2006, plaintiff applied for permission to present a late claim on the grounds that his claim did not arise until August 31, 2005, the date upon which he was released from the care and treatment of Dr. Siambanes. On April 4, 2006, the County denied plaintiff’s claim on the grounds that it failed to “satisfy the criteria listed in Government code section 911.6(b) for leave to present a late claim” Plaintiff was told that if he wished to initiate a court action, he “must first petition the appropriate court for an order relieving [him] from the provisions of Government Code section 945.4,” and that “[s]uch petition must be filed with the court within six (6) months from the date [his] application for leave to present a late claim was denied.”

Without filing any petition, on June 12, 2006, plaintiff filed a complaint against the Center for medical negligence based on alleged negligence “with respect to [his] March 22, 2005 surgery, and . . . his postoperative care and treatment.”³ On November 24, 2010, the Center moved for summary judgment on the grounds that plaintiff failed to comply with the California Tort Claims Act in bringing his action against the Center. The trial court agreed, granted the Center’s motion, and on February 28, 2011, entered judgment in favor of the Center.

II. REQUEST FOR DISMISSAL

After this case was fully briefed and a tentative opinion had been drafted and mailed to the parties, and after oral argument had been scheduled, on June 1, 2012, counsel for appellant filed a request for dismissal of the appeal.

An appellant may not dismiss an appeal as a matter of right. (*Huschke v. Slater* (2008) 168 Cal.App.4th 1153, 1160 [imposing \$6,000 sanctions on attorney for unreasonable delay in notifying appellate court that parties had settled and dismissed the underlying case].) Rather, pursuant to California Rules of Court, rule 8.244(c)(2), “On receipt of a request or stipulation to dismiss, the court *may* dismiss the appeal and direct immediate issuance of the remittitur.” (Italics added.) Thus, dismissal is discretionary. Here, because the resolution of the case is fact specific, we grant the request.

³ Initially the complaint included a claim for elder abuse; however, on August 24, 2006, plaintiff dismissed this claim.

V. DISPOSITION

The appeal is dismissed.

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HOLLENHORST

Acting P. J.

We concur:

RICHLI

J.

MILLER

J.